

amount or is not acted upon in a reasonable time.

Defective certification, as used in this subpart, means a certificate which alters or otherwise deviates from the language in 33.207(c) or which is not executed by a person duly authorized to bind the contractor with respect to the claim. Failure to certify shall not be deemed to be a defective certification.

Issue in controversy means a material disagreement between the Government and the contractor which (1) may result in a claim or (2) is all or part of an existing claim.

Misrepresentation of fact, as used in this part, means a false statement of substantive fact, or any conduct which leads to the belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.

Neutral person, as used in this subpart, means an impartial third party, who serves as a mediator, fact finder, or arbitrator, or otherwise functions to assist the parties to resolve the issues in controversy. A neutral person may be a permanent or temporary officer or employee of the Federal Government or any other individual who is acceptable to the parties. A neutral person shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral person may serve (5 U.S.C. 583).

[48 FR 42349, Sept. 19, 1983. Redesignated and amended at 50 FR 2270, Jan. 15, 1985; 56 FR 67417, Dec. 30, 1991; 59 FR 11381, Mar. 10, 1994; 60 FR 48230, Sept. 18, 1995; 63 FR 58594, Oct. 30, 1998]

33.202 Contract Disputes Act of 1978.

The Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613) (the Act), establishes procedures and requirements for asserting and resolving claims subject to the Act. In addition, the Act provides for: (a) the payment of interest on contractor claims; (b) certification of contractor claims; and (c) a civil penalty for contractor claims that are fraudulent or based on a misrepresentation of fact.

[56 FR 67417, Dec. 30, 1991, as amended at 59 FR 11381, Mar. 10, 1994]

33.203 Applicability.

(a) Except as specified in paragraph (b) below, this part applies to any express or implied contract covered by the Federal Acquisition Regulation.

(b) This subpart does not apply to any contract with (1) a foreign government or agency of that government, or (2) an international organization or a subsidiary body of that organization, if the agency head determines that the application of the Act to the contract would not be in the public interest.

(c) This part applies to all disputes with respect to contracting officer decisions on matters *arising under* or *relating to* a contract. Agency Boards of Contract Appeals (BCA's) authorized under the Act continue to have all of the authority they possessed before the Act with respect to disputes arising under a contract, as well as authority to decide disputes relating to a contract. The clause at 52.233-1, Disputes, recognizes the *all disputes* authority established by the Act and states certain requirements and limitations of the Act for the guidance of contractors and contracting agencies. The clause is not intended to affect the rights and obligations of the parties as provided by the Act or to constrain the authority of the statutory agency BCA's in the handling and deciding of contractor appeals under the Act.

[48 FR 42349, Sept. 19, 1983. Redesignated and amended at 50 FR 2270, Jan. 15, 1985]

33.204 Policy.

The Government's policy is to try to resolve all contractual issues in controversy by mutual agreement at the contracting officer's level. Reasonable efforts should be made to resolve controversies prior to the submission of a claim. Agencies are encouraged to use ADR procedures to the maximum extent practicable. Certain factors, however, may make the use of ADR inappropriate (see 5 U.S.C. 572(b)). Except for arbitration conducted pursuant to the Administrative Dispute Resolution Act (ADRA), (5 U.S.C. 571, *et seq.*), agencies have authority which is separate from that provided by the ADRA to use ADR procedures to resolve issues in controversy. Agencies may also elect